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13          **UNITED STATES DISTRICT COURT**  
14          **LAS VEGAS, NEVADA**

15          ATLANTIC SPECIALTY INSURANCE  
16           COMPANY, a foreign company,

17                 Plaintiff,

18                 vs.

19          GLOBAL PANDA ENTERTAINMENT,  
20           LLC, a domestic limited liability  
21           company,

22                 Defendant.

23          **Case No. 2:21-cv-01033-GMN-NJK**

24          **PLAINTIFF ATLANTIC SPECIALTY  
25           INSURANCE COMPANY'S  
26           [PROPOSED] DECLARATORY  
27           JUDGMENT**

28          This action having come before the Court for consideration and an Order having already  
29          been entered granting Plaintiff's Motion for Default Judgment, the Court accepts the following  
30          factual allegations in the Complaint as true<sup>1</sup> and makes the following conclusions of law:

31          **FACTUAL ALLEGATIONS ACCEPTED AS TRUE:**

32          1.       On or about June 8, 2016, Christopher Scott Sykes ("Claimant") filed an Amended  
33           Complaint and Demand for Jury Trial ("Underlying Complaint") against Global Panda  
34           Entertainment, LLC ("Global Panda") and others. *See* Compl. for Dec. Relief [Dkt. No. 1] at ¶ 6.

35          2.       The Underlying Complaint generally alleges the following: (a) on or about July 1,  
36           2014, Claimant was attending a Global Panda show when he was struck in his forehead by and

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<sup>1</sup> The Court is required to accept the factual allegations in the Complaint as true after the entry of default. *See Televideo  
39           Sys., Inc. v. Heidenthal*, 862 F.2d 915, 917-918 (9<sup>th</sup> Cir. 1987) (per curium).

1 unknown object; and (b) as a result of being struck in the head by this unknown object, Claimant  
 2 has suffered serious injuries. *See id.* at ¶ 7.

3       3. Global Panda tendered the Underlying Complaint to Atlantic Specialty Insurance  
 4 Company (“Atlantic Specialty”) for defense and indemnification (the “Claim”) under Commercial  
 5 General Liability Policy No. 710034033001 (“Policy”) issued to named insured Global Panda with  
 6 effective dates of March 15, 2004, to March 15, 2015. *See id.* at ¶ 9.

7       4. Subject to the Policy’s terms, conditions, limitations and exclusions, Atlantic  
 8 Specialty accepted coverage for the Claim up to the liability limits and hired counsel to defend  
 9 Global Panda against the claims asserted in the Underlying Complaint. *See id.* at ¶ 11.

10      5. The Policy contains provision requiring Global Panda to cooperate in the  
 11 investigation, settlement or defense of the Underlying Complaint. *See id.* at ¶ 12.

12      6. Global Panda has failed and/or refused to comply with its duty under the Policy to  
 13 cooperate in the investigation, settlement or defense against the Underlying Complaint as evidenced  
 14 (but not limited to) the following:

- 15       a. Failing and/or refusing to provide Atlantic Specialty or retained counsel with an  
 16 appropriate point of contact for Global Panda;
- 17       b. Failing and/or refusing to communicate with Atlantic Specialty or retained defense  
 18 counsel in connection with the Claim and the defense against the Underlying  
 19 Complaint;
- 20       c. Failing and/or refusing to assist Atlantic Specialty or retained counsel with the  
 21 preparation of responses to written discovery requests directed to Global Panda; and
- 22       d. Failing and/or refusing to make available witnesses for deposition.

23 *See id.* at ¶ 14.

24      7. The Nevada Supreme Court has held there is evidence in the underlying litigation  
 25 that Global Panda was not participating in its own defense:

26           Third, the district court found that Atlantic [Specialty] failed to  
 27 present evidence showing that Global Panda was not participating in  
 28 its own defense. This finding was contrary to evidence in the record  
           because affidavits show that Global Panda was not participating in  
           its own defense. . . .

1     *Atlantic Specialty Ins. Co. v. Eighth Judicial Dist. Ct.*, Case No. 81418, Order Granting Petition  
 2 (Nev. Sup. Ct. Mar. 26, 2021); *see also* Comp. for Dec. Relief at ¶ 15.

3         8.     Global Panda's failure and/or refusal to comply with its duty to cooperate has  
 4 substantially prejudiced Atlantic Specialty's rights under the Policy including (but not limited to)  
 5 the right to control the defense against the Underlying Complaint and to assert relevant defenses  
 6 with respect to liability and damages. *See id.* at ¶ 16.

7 **CONCLUSIONS OF LAW:**

8         1.     This Court has already determined that it has jurisdiction over this matter pursuant  
 9 to 28 U.S.C. § 1332 because there is complete diversity of citizenship among the parties and the  
 10 amount in controversy, exclusive of fees and costs, is in excess of seventy-five thousand dollars  
 11 (\$75,000.00). *See* Order (10/6/21) [Dkt. No. 29] (adopting Magistrate Judge Koppe's Report and  
 12 Recommendation which finds the Court has diversity jurisdiction).

13         2.     Venue is proper in the United States District Court for the District of Nevada  
 14 pursuant to 28 U.S.C. § 1391(b).

15         3.     This Court is permitted to adjudicate a party's rights and other legal relations in an  
 16 actual controversy pursuant to 28 U.S.C. § 2201, the Declaratory Judgment Act.

17         4.     This Court has already granted Atlantic Specialty's Application for Default  
 18 Judgment. *See* Order (10/6/21) [Dkt. No. 29].

19         5.     Because of Global Panda's failure and/or refusal to comply with its duty to  
 20 cooperate under the Policy, Atlantic Specialty is entitled to disclaim coverage for the Claim made  
 21 by Global Panda in connection with the Underlying Complaint. *See, e.g., Valentine v. State Farm*  
*Mut. Auto. Ins. Co.*, 105 F.Supp.3d 1176, 1183-1184 (D. Nev. 2015); *Schwartz v. State Farm Mut.*  
*Auto. Ins. Co.*, 2009 WL 2197370, at \*7 (D. Nev. July 23, 2009).

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**IT IS HEREBY ORDERED AND ADJUDGED:**

That a declaratory judgment is entered in favor of Atlantic Specialty and against Defendant Global Panda, declaring that Atlantic Specialty is not obligated under the Policy to defend or indemnify Global Panda against the claims asserted by Claimant including those alleged in the Underlying Complaint.

## **IT IS SO ORDERED.**

**IT IS FURTHER ORDERED** that the Clerk is instructed to close the case.

Dated this 27 day of October, 2021.

Gloria M. Navarro, District Judge  
UNITED STATES DISTRICT COURT

Prepared and Submitted by:  
EVANS FEARS & SCHUTTERT LLP

By: /s/ Justin S. Hepworth  
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Las Vegas, Nevada 89119  
*Attorneys for Plaintiff Atlantic Specialty Insurance Company*

1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that a true and correct copy of **PLAINTIFF ATLANTIC SPECIALTY**  
3 **INSURANCE COMPANY'S [PROPOSED] DECLARATORY JUDGMENT** was served on  
4 counsel of record this 12<sup>th</sup> day of October using the Court's CM/ECF System.

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6                   /s/ *Faith Radford*  
An Employee of Evans Fears & Schuttert LLP

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